

**IN THE U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

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IN RE: ETHICON, INC. PELVIC REPAIR )  
SYSTEM PRODUCTS LIABILITY LITIGATION ) MDL No. 2327  
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**This Document Relates To:**

**All Cases on Exhibit 1**

**Master File No. 2:12-md-02327**

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE OUT OF TIME**  
**PTO # 293/ #298 ELECTION FORMS**

COME NOW Plaintiffs listed on Exhibit 1, by and through their attorneys, Simmons Hanly Conroy, LLC, and move for leave to file out of time additional PTO # 293/ # 298 election forms, and state as follows:

1. On April 11, 2018 this Court issued Pretrial Order # 293 ("PTO #293") establishing procedures for the voluntary dismissal or disposition of cases involving Plaintiffs implanted with Ethicon's on-marked TVT products where Plaintiffs have not undergone a qualifying revision surgery.
2. On May 15, 2018 this Court issued Pretrial Order # 298 ("PTO #298") extending the deadline for Plaintiffs to file their election forms until July 10, 2018.
3. Simmons Hanly Conroy filed two hundred and ninety (290) election forms on or before the deadline.
4. In spite of Plaintiffs' counsel following up with numerous letters and phone calls, many Plaintiffs failed to understand the procedures set forth by PTO #293 and #298, and therefore were reluctant to respond to Plaintiffs' counsel and provide an election form.

5. Understandably, many Plaintiffs wanted to speak with an attorney or seek medical advice before agreeing to file an election form.
6. Since the July 10, 2018 deadline, Plaintiffs' counsel have filed an additional five (5) election forms.
7. Fed. Rule Civ. P. 6(b)(1)(B) provides that the Court may grant a motion for extending time "made after the time has expired if the party filed to act because of excusable neglect". Fed. Rule Civ. P. 6(b)(1)(B).
8. In the present action, Plaintiffs' counsel filed two hundred and ninety (290) election forms prior to the deadline. At the time of the deadline, Plaintiffs' counsel had filed election forms for all cases where Plaintiffs had returned mail or phone call in response to Plaintiffs' counsel regarding PTO #293 and #298.
9. At the time of the deadline, counsel had contacted or attempted to contact, at least six (6) times, all five (5) Plaintiffs listed on Exhibit 1.
10. Plaintiffs' counsel reasonably believed many, if not all, of these five (5) Plaintiffs were going to return an election form prior to the deadline or the Plaintiffs initially elected to continue their case and then changed their mind and wished to now voluntarily dismiss their case without prejudice. Therefore, Plaintiffs' counsel's delay in filing election forms for the cases on Exhibit 1 was excusable neglect as provided by Rule 6.
11. In the interest of expediting the voluntary dismissal or disposition of the many Ethicon pelvic mesh cases filed in this Court, Plaintiffs move for leave to file out of time election forms for cases listed on Exhibit 1, thereby allowing this Court to enter an Order of dismissal for the late filed election forms for Plaintiffs listed on Exhibit 1.

WHEREFORE, Plaintiffs respectfully request this Court grant Plaintiffs' Motion for Leave to File Out of Time PTO #293 and #298 election forms for all cases listed on Exhibit 1.

Respectfully submitted,

/s/ John J. Foley

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

*/s/ John J. Foley* \_\_\_\_\_

John J. Foley